

**SENATE BILL NO. 2046
with House Amendments**

Sixtieth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2046

Introduced by

Government and Veterans Affairs Committee

(At the request of the Teachers' Fund for Retirement)

1 A BILL for an Act to amend and reenact subsection 9 of section 15-39.1-04, subsection 4
2 section 15-39.1-10, section 15-39.1-10.6, subsection 1 of section 15-39.1-19.1, and sections
3 15-39.1-19.2 and 15-39.1-20 of the North Dakota Century Code, relating to the incorporation of
4 federal law changes, returning to teaching, and accepting a refund from the fund under the
5 teachers' fund for retirement; and to provide for a legislative council study.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Subsection 9 of section 15-39.1-04 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 9. "Salary" means a member's earnings in eligible employment under this chapter for
10 teaching, supervisory, administrative, and extracurricular services during a school
11 year reported as salary on the member's federal income tax withholding
12 statements plus any salary reduction or salary deferral amounts under 26 U.S.C.
13 125, 132(f), 401(k), 403(b), 414(h), or 457 in effect on ~~August~~ July 1, 2005 2007.
14 "Salary" includes bonus amounts paid to members for performance, retention,
15 experience, and other service-related bonuses, unless amounts are conditioned on
16 or made in anticipation of an individual member's retirement or termination. The
17 annual salary of each member taken into account in determining benefit accruals
18 and contributions may not exceed the annual compensation limits established
19 under 26 U.S.C. 401(a)(17)(B) in effect on ~~August~~ July 1, 2005 2007, as adjusted
20 for increases in the cost of living in accordance with 26 U.S.C. 401(a)(17)(B) in
21 effect on ~~August~~ July 1, 2005 2007. A salary maximum is not applicable to
22 members whose participation began before July 1, 1996. "Salary" does not
23 include:

- 1 a. Fringe benefits or side, nonwage, benefits that accompany or are in addition
2 to a member's employment, including insurance programs, annuities,
3 transportation allowances, housing allowances, meals, lodging, or expense
4 allowances, or other benefits provided by a member's employer.
- 5 b. Insurance programs, including medical, dental, vision, disability, life,
6 long-term care, workforce safety and insurance, or other insurance premiums
7 or benefits.
- 8 c. Payments for unused sick leave, personal leave, vacation leave, or other
9 unused leave.
- 10 d. Early retirement incentive pay, severance pay, or other payments conditioned
11 on or made in anticipation of retirement or termination.
- 12 e. Teacher's aide pay, referee pay, busdriver pay, or janitorial pay.
- 13 f. Amounts received by a member in lieu of previously employer-provided
14 benefits or payments that are made on an individual selection basis.
- 15 g. Recruitment bonuses.
- 16 h. Other benefits or payments not defined in subdivisions a through g which the
17 board determines to be ineligible teachers' fund for retirement salary.

18 **SECTION 2. AMENDMENT.** Subsection 4 of section 15-39.1-10 of the North Dakota
19 Century Code is amended and reenacted as follows:

- 20 4. Retirement benefits must begin no later than April first of the calendar year
21 following the year the member attains age seventy and one-half or April first of the
22 calendar year following the year the member terminates covered employment,
23 whichever is later. Payments must be made over a period of time which does not
24 exceed the life expectancy of the member or the joint life expectancy of the
25 member and the beneficiary. Payment of minimum distributions must be made in
26 accordance with section 401(a)(9) of the Internal Revenue Code in effect on
27 ~~August~~ July 1, 2005 2007, and the regulations issued under that section, as
28 applicable to governmental plans.

29 **SECTION 3. AMENDMENT.** Section 15-39.1-10.6 of the North Dakota Century Code
30 is amended and reenacted as follows:

1 **15-39.1-10.6. Benefit limitations.** Benefits with respect to a member participating
2 under former chapter 15-39 or chapter 15-39.1 or 15-39.2 may not exceed the maximum
3 benefits specified under section 415 of the Internal Revenue Code [26 U.S.C. 415] in effect on
4 ~~August July 1, 2005~~ 2007, for governmental plans. ~~This section does not constitute an election~~
5 ~~under section 415(b)(10)(C) of the Internal Revenue Code [26 U.S.C. 415(b)(10)(C)] in effect~~
6 ~~on August 1, 2005.~~

7 **SECTION 4. AMENDMENT.** Subsection 1 of section 15-39.1-19.1 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 1. Except as otherwise provided in section 15-39.1-19.2, a retired teacher who is
10 receiving a retirement annuity under chapter 15-39, 15-39.1, or 15-39.2 may not
11 return to covered employment until thirty calendar days have elapsed from the
12 member's retirement date. A retired member may then return to covered
13 employment under an annual hour limit and continue receiving a monthly
14 retirement benefit. The annual hour limit is based on the length of the reemployed
15 retiree's contract as follows:

16 a. Retiree reemployment of nine months or less, annual limit is seven hundred
17 hours;

18 b. Retiree reemployment of ten months, annual limit is eight hundred hours;

19 c. Retiree reemployment of eleven months, annual limit is nine hundred hours;
20 or

21 d. Retiree reemployment of twelve months, annual limit is one thousand hours.

22 Employment as a substitute teacher does not apply to the annual hour limit.

23 Professional development and extracurricular duties do not apply to the annual
24 hour limit.

25 The retired member and the retired member's employer must notify the fund
26 office in writing within thirty days of the retired member's return to covered
27 employment. Should the retired member's employment exceed the annual hour
28 limit, the retired member must immediately notify the fund office in writing. Failure
29 to notify the fund office results in the loss of one month's annuity benefit. The
30 retired member's monthly benefit must be discontinued the first of the month
31 following the date the member reaches the annual hour limit.

1 A retired member who returns to teaching shall pay the required contributions
2 on those earnings received by the retired member after reaching the annual hour
3 limit. The employer shall pay the required contributions in a like manner.

4 A participating employer who employs a retired member under this section
5 shall pay to the fund seven and seventy-five hundredths percent per annum of the
6 salary of the retired member until the retired member reaches the annual hour
7 limit.

8 **SECTION 5. AMENDMENT.** Section 15-39.1-19.2 of the North Dakota Century Code
9 is amended and reenacted as follows:

10 **15-39.1-19.2. Retired teachers return to active service - Critical shortage areas**
11 **and disciplines - Rules.**

- 12 1. A retired teacher who is receiving a retirement annuity under chapter 15-39,
13 15-39.1, or 15-39.2 may elect to return to teaching without losing any benefits
14 under the provisions of this section or elect to return to teaching under the
15 provisions of section 15-39.1-19.1. To return to teaching under this section, a
16 retired teacher must:
- 17 a. Return to teach in a critical shortage geographical area or subject discipline
18 as determined by the education standards and practices board by rule; and
 - 19 b. If retired after January 1, 2001, have been receiving a retirement annuity for
20 at least one year. A retired teacher may perform noncontracted substitute
21 teaching duties but may not engage in full-time or part-time teaching duties
22 during the one-year separation from service.
 - 23 c. Notify the fund office in writing within thirty days of the retired member's return
24 to covered employment. The retired member's employer must also notify the
25 fund office in writing within thirty days of the retired member's return to
26 covered employment.
- 27 2. A retired teacher who returns to teaching under this section is not required to pay
28 the employee assessment required by section 15-39.1-09. A retired teacher who
29 returns to teaching under the provisions of this section must be treated as retired
30 for all other purposes under this chapter. A retired teacher may not earn any
31 additional service during the period of reemployment. The retired teacher's

1 benefits may not be adjusted to reflect changes in the retired teacher's age or final
2 average monthly salary at the end of the period of reemployment, any optional
3 form of payment elected under section 15-39.1-16 remains effective during and
4 after the period of reemployment, and additional benefits normally available to an
5 active member, such as disability benefits, are not available to a retired teacher
6 reemployed under this section.

7 3. A participating employer who employs a retired member under this section shall
8 pay to the fund seven and seventy-five hundredths percent per annum of the
9 salary of the retired member.

10 **SECTION 6. AMENDMENT.** Section 15-39.1-20 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **15-39.1-20. Withdrawal from fund.** When a member of the fund ceases to be eligible
13 under the terms of this chapter to participate in the fund, the member may, after a period of one
14 hundred twenty days, withdraw from the fund and is then entitled to receive a refund of
15 assessments accumulated with interest. The one-hundred-twenty-day requirement may be
16 waived by the board when it has evidence the teacher will not be returning to teach in North
17 Dakota. The refund is in lieu of any other benefits to which the member may be entitled under
18 the terms of this chapter, and by accepting the refund, the member is waiving any right to
19 participate in the fund under the same provisions that existed at the time the refund was
20 accepted regardless of whether the member later repurchases refunded service credit. The
21 accumulated assessments of a member who ceases to be eligible to participate in the fund
22 before becoming vested must be automatically refunded. The assessments plus interest
23 earned, if not claimed by the member, must be returned in the fiscal year following the date of
24 termination. The automatic refund must be waived provided the member presents the board
25 with a statement of intent to return to teach in North Dakota within thirty six months after
26 eligibility to participate in the fund ceases. The board may waive the automatic refund for
27 members who present to the board a statement of intent to return to teach in North Dakota
28 within a period exceeding thirty six months after eligibility to participate in the fund ceases. A
29 member may elect, at the time and under rules adopted by the board, to have any portion of an
30 eligible rollover distribution paid directly in a direct rollover to an eligible retirement plan

1 specified by the member as allowed under section 401(a)(31) of the Internal Revenue Code in
2 effect on ~~August~~ July 1, 2005 2007.

3 **SECTION 7. LEGISLATIVE COUNCIL - TEACHERS' FUND FOR RETIREMENT**
4 **INVESTMENT STUDY.** The legislative council shall consider studying, during the 2007-08
5 interim, the investment of teachers' fund for retirement assets, reallocation of assets, and the
6 appropriateness of investment guidelines developed by the teachers' fund for retirement board
7 of trustees. The legislative council shall report its findings and recommendations, together with
8 any legislation required to implement the recommendations, to the sixty-first legislative
9 assembly.